

Members

Sen. David Ford, Chairperson  
Sen. Brent Steele  
Sen. Anita Bowser  
Sen. Billie Breaux  
Rep. Cleo Duncan  
Rep. Andrew Thomas  
Rep. Clyde Kersey  
Rep. Vanessa Summers  
John Brandt  
Bruce Pennamped  
Judge Robyn Moberly  
Sharon Bradford



## CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Authority: IC 33-2.1-10-1

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 12, 2005  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington  
St., Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Sen. David Ford, Chairperson; Sen. Brent Steele; Sen. Anita Bowser; Sen. Billie Breaux; Rep. Andrew Thomas; Rep. Clyde Kersey; Rep. Vanessa Summers; Judge Robyn Moberly; Sharon Bradford.

**Members Absent:** Rep. Cleo Duncan; John Brandt; Bruce Pennamped.

Senator Ford, Chairperson, called the first meeting of the Indiana Child Custody and Support Advisory Committee ("Committee") to order at 1:05 PM and noted that Senator Bowser had an announcement.

Senator Bowser provided handouts<sup>2</sup> concerning a new facility in LaPorte County that provides parent and family support, including care for children who are abused or

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

<sup>2</sup> Exhibits 1 through 6

neglected. Senator Bowser stated that the facility is in a beautiful building paid for by volunteer help and grants. She suggested that she would like the Committee to take a field trip to see the facility. Senator Ford indicated that the Committee was limited this year on time and meetings and that the Committee may be in a better position to consider a trip to see the facility next year.

### **Child Support for Post-Secondary Education**

Representative Pond introduced herself and then introduced her son, Dr. William Pond, to speak on issues concerning child support for post-secondary education. Dr. Pond provided background information concerning his credentials and his current situation as a custodial parent. He discussed the current law in Indiana on post-secondary education child support and provided a handout<sup>3</sup> on proposed changes to the current law. He then provided information on: (1) laws in other states; (2) the history of Indiana law in this area; (3) arguments in favor of the current law in Indiana; (4) arguments against the current law; and (5) the political realities of the proposed changes to the law. Dr. Pond indicated that the current law should be changed so that child support obligations under the law, including post-secondary education child support, cease at the age of majority, which is 18 years of age. He also indicated that the current law causes discord between family members and amounts to an unconstitutional taking of property from one able bodied class to another. He further opined that under the constitutional principle of equal protection, like persons in like circumstances will be treated similarly. Dr. Pond provided a handout<sup>4</sup> of his testimony.

In response to Dr. Pond's testimony, Senator Ford indicated that the law applies to broken families that are already in discord and that students are not considered emancipated. Senator Ford also pointed out that an individual has the right to address the issue of post-secondary educational support in court and asked Dr. Pond whether the parent who wants to support the child's post-secondary education expenses should have the full burden of the costs. Dr. Pond responded that this issue should not be addressed in court and questioned whether a person who is 18 years of age has a right to an education.

In response to a Committee member's questions concerning how often Dr. Pond had been before the Court of Appeals and the Indiana Supreme Court, he responded that he had been to the Court of Appeals two or three times and the Indiana Supreme Court once.

Senator Steele explained that under law, the court must consider the standard of living the child would have had if the family was intact and the ability of each parent to meet his or her expenses. Senator Steele provided a handout<sup>5</sup> on current Indiana law and excerpts from the Indiana Child Support Rules and Guidelines concerning child support for educational expenses.

Dr. Pond opined that the courts should not be involved, and the parents and child should work out the issues themselves. He further indicated that the age for support should be the same as the age of majority, which is 18 years of age.

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<sup>3</sup> Exhibit 7

<sup>4</sup> Exhibit 8

<sup>5</sup> Exhibit 9

In response to questions from Committee members concerning raising the age of majority, Dr. Pond responded that numerous other issues and laws would need to be changed or addressed if the age of majority was changed.

Representative Summers indicated that amending the law as Dr. Pond suggested would take funds from custodial parents and would seem to result in more discord among the parents and the child. She also stated that she did not see the benefit in his proposed changes to the law and that the changes would not benefit the child. Dr. Pond stated that parents should have a moral obligation to support their children after the age of 18 but that the legal obligation should be the same regardless of whether the parents are married.

Representative Thomas opined that the arguments concerning the laws in numerous other states where the age for child support ceases at 18 years of age and the constitutional issues are compelling. In response to a questions from Committee members, Dr. Pond indicated that he was willing to look at other options for changes to the current law on this issue.

Mr. Robert Billingham, a custodial parent, testified that he taught classes on the long term effects of divorce. He stated that he believes Indiana law should be amended so that child support, including post-secondary educational expenses, cease when a child is 18 years of age. He also indicated that the courts apply the child support formula under the child support guidelines.

The Committee noted that a court has a right to deviate from the formula under the child support guidelines, and individuals have a right to litigate child support for post-secondary education.

Mr. Bruce Smith testified that he agreed with changing the law so that child support would cease when a child is 18 years of age. He indicated that fathers should be encouraged to be more involved in their children's lives. In response to questions from the Committee members, Mr. Smith stated that he had spent approximately \$7,500 to litigate issues involving his children.

Ms. Julie Robbins testified that she is a custodial mother and agrees that the current law should be amended so that child support ceases when a child is 18 years of age because of the constitutional issues that Dr. Pond discussed. In response to questions from Committee members, Ms. Robbins explained that the age of majority is all over the place and that even though an individual has a right to litigate, the judge must explain why he or she is deviating from the child support guidelines, which places a burden on the judge. Senator Steele pointed out that often the attorneys provide the explanation in a document filed with the court.

Mr. Charles Erickson testified that his parents did not pay for his college education because they wanted to teach him the value of money and the cost of an education. He indicated that the current law takes away a parent's right to teach certain values. He provided statistics from a survey that suggests courts are biased.

## **Consideration of Legislative Proposals**

### *PD 3210<sup>6</sup> -- Legal Settlement in School Corporation*

Preliminary draft (PD) 3210 provides that where a court order grants a parent custody of a student, the parent granted custody (or the student if the student is at least 18 years of age) may elect at the beginning of a school year for the student to have legal settlement in the school corporation in which the student's mother resides or the school corporation in which the student's father resides. PD 3210 further provides that: (1) the election may be made only on a yearly basis; and (2) the student or parent who makes the election may not be charged transfer tuition.

Mr. Andrew Soshnick, representing the Indiana State Bar Association, Family Law Section, spoke in support of PD 3210. He indicated that transportation costs may need to be addressed. In response to questions from Committee members, Mr. Soshnick indicated that the schools may have concerns with the costs that may result from the proposed bill draft, clarified that a student may only attend a school corporation where either the father or the mother of the student resides under the proposed bill draft, and indicated that in joint custody situations legal settlement of a student is usually in the school corporation where the child predominantly resides.

The Committee members voted by consent to amend PD 3210, specifically clarifying custody to include physical custody. The Committee members also clarified when an individual must make an election for legal settlement to include "not later than fourteen (14) days before the first student day" at the beginning of the school year. PD 3210, as amended, was approved by the Committee members in a roll call vote, 8-0.<sup>7</sup>

### *PD 3248<sup>8</sup> -- Relocation Issues in Child Custody Matters*

\_\_\_\_\_ PD 3248 requires an individual who has or is seeking custody of a child and who intends to relocate with the child to: (1) provide notification to the nonrelocating parent by registered mail not later than 90 days before the individual intends to move; and (2) provide specific information in the notice unless providing the information would create a significant risk of substantial harm to the individual or the child. PD 3248 further provides that a court may: (1) consider the intent to relocate a child in an initial custody hearing; and (2) find an individual who fails to give appropriate notice of an intended relocation in contempt and impose sanctions. PD 3248 also provides that: (1) a nonrelocating parent may file a motion with the court to prevent the relocation of a child not later than 60 days after the nonrelocating parent receives the notice; (2) if the nonrelocating parent fails to file a motion with the court, the individual may relocate with the child; (3) upon request of either party, the court shall hold a full evidentiary hearing; and (4) the individual intending to relocate has the burden of proof that the relocation is made in good faith. PD 3248 establishes: (1) additional factors the court may consider in determining whether to modify the custody, parenting time, or support orders in actions concerning relocation of a child; and (2) factors the court may consider in granting or denying a petition to prevent relocation of a child. Finally, PD 3248 repeals a provision being moved to another location in the code.

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<sup>6</sup> Exhibit 10

<sup>7</sup> Exhibit 11

<sup>8</sup> Exhibit 12

Mr. Soshnick explained that the language in PD 3248 was based on the American Academy of Matrimonial Lawyers Proposed Model Relocation Act. He further noted that relocation issues are one of the top two or three most contested issues in litigation in this area. Mr. Soshnick noted that parts of the proposed bill draft should be clarified.

The Committee members discussed whether 90 days was a reasonable time period in which to give notice before an intended relocation and whether the distance that a party must move before the notice requirement applies is appropriate.

Mr. Billingham testified that the court should take into consideration the extent to which the parties and child are settled in the community.

Mr. Joel Kilzer provided background information on his situation as a non-custodial parent. He testified that his ex-wife moved 20 miles away from where he lived, and he was unable to participate in his children's extracurricular activities as a result of the move. He further explained that because of the relocation he was unable to be as active in his children's lives and had lost parenting time with his children.

Mr. Smith discussed his experience concerning his ex-wife's relocation with their child. He provided handouts<sup>9</sup> that included information on his personal experience and suggestions on preventing relocations and addressing transportation issues when one parent relocates.

Ms. Robbins testified that 90 days was reasonable notice. She also indicated the burden of proof should be on the custodial parent who wants to relocate.

The members of the Committee discussed having other judges and attorneys look at PD 3248 before voting on the proposed bill draft.

### **Other Business**

\_\_\_\_\_The members of the Committee received two handouts<sup>10</sup> that contained emails from Mr. Robert Monday and Mark and Kristene Miller addressing the topics of child support for post-secondary education, legal settlement of a student, relocation issues in child custody matters, and the Indiana Parenting Time Guidelines. In addition, a draft of a final report<sup>11</sup> for the Committee was provided to the Committee members. Senator Ford set the next meeting date for October 28, 2005 at 1:00 PM.

### **Adjournment**

There being no further business to conduct, Senator Ford adjourned the meeting at 3:20 PM.

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<sup>9</sup> Exhibits 13 and 14

<sup>10</sup> Exhibits 15 and 16

<sup>11</sup> Exhibit 17